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OTIS ELEVATOR COMPANY
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OFFICE OF PETITIONS

In re Application of :
Marti et al. :
Application Number: 10/529079 : ON PETITION
Filing Date: 03/24/2005 :
Attorney Docket Number: 60469- :
209; OT-5123 :

This is a decision on the "PETITION FOR WITHDRAWAL OF NOTICE OF ABANDONMENT UNDER 37 C.F.R. 1.181(a) AND CONDITIONAL PETITION TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION UNDER 37 C.F.R. 1.137(b)," which, in view of petitioner's statement that petitioners attempted to timely pay the issue and publication fees, is first treated as a petition under 37 CFR 1.181, to withdraw the holding of abandonment of the above-identified application.

The petition to withdraw the holding of abandonment is GRANTED.

The petition under 37 CFR 1.137(b) is DISMISSED AS MOOT.

The application was held abandoned for failure to timely submit the issue and publication fees as required by the Notice of Allowance and Fee(s) Due mailed on October 4, 2007. On November 13, 2007, the Fee(s) Transmittal was received, along with a credit card payment of \$130.00.¹ On January 29, 2007, a Notice of Abandonment was mailed.

On February 14, 2008, the present petition was filed. Petitioners concede that an incorrect payment amount was inadvertently specified on the credit card payment form submitted with the Fee(s) Transmittal, but state that the application should not be held abandoned because the original Transmittal Letter filed with the application papers contained a general

¹ The amount due for the issue and publication fees was \$1,740.00

authorization to charge any required fees to counsel's deposit account.

Petitioner's argument is well taken. A review of the official file reveals that the transmittal letter filed with the application papers on March 24, 2005, contained a general authorization to charge any required fees to counsel's deposit account, No. 50-1482.

Furthermore, MPEP 1306 states, in pertinent part:

Where it is clear that an applicant actually intends to pay the issue fee and required publication fee, but the proper fee payment is not made, for example, an incorrect issue fee amount is supplied, or a PTOL-85B Fee(s) Transmittal form is filed without payment of the issue fee, a general authorization to pay fees or a specific authorization to pay the issue fee, submitted prior to the mailing of a notice of allowance, will be allowed to act as payment of the correct issue fee. 37 CFR 1.311(b).

As the Fee(s) Transmittal form was timely filed on November 13, 2007, the Office may treat the previously-filed general authorization as evidence of timely payment of the correct issue (and publication) fee(s).

The holding of abandonment is withdrawn. The communication mailed on 26 December, 2006, is vacated to the extent it stated the application was abandoned.

It is noted that the issue and publication fees have been paid with the present petition. As such, no additional fees are due.

As the holding of abandonment has been withdrawn, the petition fee is unnecessary, and will be credited to counsel's deposit account as authorized in the present petition.

The address in the petition is different than the correspondence address. A courtesy copy of this decision is being mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record.

The file is being referred to the Office of Data Management for processing into a patent.

All other inquiries regarding this decision may be directed to the undersigned at 571-272-3231.



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